

The following is an article that appeared in Gongwer on December 2, 2014.

Committee Approves New Leaking Tank Program, Invasives Penalties

The state would again provide the financial assurance required of underground storage tank owners and those transporting invasive aquatic species would face new penalties under legislation reported Tuesday from the House Natural Resources Committee.

The new Underground Storage Tank Cleanup Fund would again use the 7/8 cent charge on each gallon of fuel to cover the cost of leaking tanks.

The program would replace the current requirement that tank owners carry insurance to cover the costs of any leaks, Sen. Mike Green (R-Mayville), sponsor of SB 791 , said.

"My intent for this is to solve the massive problem from leaking underground storage tanks," Mr. Green said.

But the program would not cover costs for any tanks that have already been reported as leaking, officials with the Michigan Petroleum Association said.

"It doesn't cover historical problems," Cliff Knaggs, attorney for the group, said. "It was determined there was not enough money to do that."

Robert Wagner, chief of the Department of Environmental Quality Remediation and Redevelopment Division, said the fee brings in about \$50 million a year, and there is about \$20 million in the current fund.

Mark Griffin, president of the petroleum association, noted that for recent leaks, owners should be covered by insurance.

Mr. Knaggs said the change is needed, though, because the current process usually leaves owners

and operators footing the bill for at least initial cleanup. Insurance companies are regularly rejecting claims for leaks, he said, adding the coverage is getting more difficult to obtain.

Environmental groups are backing the change, but are wary.

"We tried this once with the MUSTFA program," James Clift, policy director for the Michigan Environmental Council, said of the former Michigan Underground Storage Tank Financial Assurance Program, essentially ended in 1995, though the fee was not repealed. "We didn't do it very well."

One of the reasons the program was repealed at the time was insufficient funds to cover the costs of the cleanups.

Mr. Clift said it would be incumbent on the Legislature to be sure the funds were being used properly.

And it should consider revising the fee to account for the condition of the tank being covered. "My biggest concern is the high risk tanks pay the same as new, state of the art, tanks," he said.

The bill moved on a somewhat partisan vote 7-0 vote, with Rep. Charles Smiley (D-Burton) and Rep. John Kivela (D-Marquette) abstaining.

A bill (SB 891) to make further modification to toxic cleanup requirements did see a partisan split 6-2 vote, with Mr. Smiley abstaining and Mr. Kivela and Rep. Scott Dianda (D-Calumet) opposed.

Supporters said the measure was intended to provide further clarifications on cleanup standards.

Among the changes is defining "facility" to be just the area contaminated. Troy Cumings with Warner, Norcross and Judd said the change was needed, along with some clarifications in notification requirements, to make property transfers and redevelopment easier.

But the changes also eliminate some current protections, Mr. Clift said.

The bill would, for instance, eliminate the current preference for removing the hazardous materials, allowing more sites to be considered cleaned up if the material is contained, he said.

It also would allow parcels being converted to park land to be cleaned up to less than residential standards, which he said was not sufficient for a recreation area.

Those transporting invasive species could lose more than a few dollars under legislation reported from the committee. The bills (SB 795 , SB 796 , SB 797 , SB 799 and SB 800) would allow for confiscation of vehicles and other equipment used in transporting prohibited aquatic species.

Committee members did raise concerns that the legislation would not include accidental movement of invasives.

"My only concern is maybe that unintended consequence of that small fisherman," Rep. Ken Goike (R-Ray Township) said. "I want to be sure it protective of the innocent through ignorance."

Both sponsors and Department of Natural Resources officials said the language had been revised in the Senate to ensure the transport was an intentional act.

"If have an overzealous officer you'll be able to rein them back in?" Mr. Goike asked of DNR officials.

"Innocent until proven guilty," spokesperson Trevor VanDyke responded.

But Rep. Joel Johnson (R-Clare) and Rep. Ed McBroom (R-Vulcan) abstained on SB 795 over concerns that the bills would not require a conviction for transporting invasives for the seized property to be forfeited. Mr. VanDyke and bill drafters said that was the intent but could not, in

committee, confirm that was the language.

The rest of the package was reported on 9-0 votes.

The committee unanimously reported bills that would prohibit using drones to harass hunters and anglers (SB 926) or to hunt or fish (SB 927).

Mr. VanDyke said the department supports the bills, but acknowledged they were not technically necessary, as the former would be covered by other legislation prohibiting harassment of those hunting and fishing, and the latter by a wildlife order as well as legislation prohibiting hunting from aircraft.

Mr. Dianda and Mr. Goike both raised concerns about allowing the DNR to use drones for enforcement. "That would be harassment to me," Mr. Goike said.

Mr. VanDyke said the issue had not been raised within the department.

